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## MANAGEMENT DISCUSSION AND ANALYSIS

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## Mediation and ADR

Larry Gibbons, Director

In the latter part of Fiscal Year 2011, the Office of Alternative Dispute Resolution Services (ADRS) was merged into the Office of Mediation Services and renamed to Office of Mediation and ADR Services (OMAS).

OMAS manages mandatory **Mediation** of collective bargaining disputes pursuant to statutory authority under "Section 6" of the Railway Labor Act (RLA), which is applicable to both the airline and railroad industries. The **ADR** component offers voluntary dispute resolution programs to the parties including facilitation, grievance mediation, training, and other dispute resolution efforts.

For this fiscal year, Mediation and ADRS are discussed separately below. Also, for the purpose of this Annual Report, no effort is made to separate from ADRS other functions that were reorganized during FY 2011.

**Note** A complete list of acronyms is given at the back of this annual report.

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## Mediation Overview

The RLA requires labor and management to exert every reasonable effort to make and maintain collective bargaining agreements. Initially, the parties must give notice to each other of their proposals for new or revised agreements. Direct Negotiation between the parties must commence promptly and continue in an effort to conclude a new collective bargaining agreement or to narrow their differences. Should parties fail to reach agreement during Direct Negotiations, either party or the parties jointly, may apply to the NMB for Mediation. Following receipt of an application, the NMB promptly assigns a mediator to assist the parties in reaching an agreement. [An application for NMB mediation services may be obtained from the Agency's web site at [www.nmb.gov](http://www.nmb.gov).]

The NMB is obligated under the Act to use its "best efforts" to bring about a peaceful resolution of the dispute. If such efforts do not settle the dispute, the NMB advises the parties

and offers Interest Arbitration (proffers arbitration) as an alternative approach to resolving the remaining issues. If either party rejects this offer of binding arbitration, the NMB releases the parties from formal Mediation. This release triggers a thirty-day Cooling Off period, during which the Agency continues to work with the parties to achieve a consensual solution to the dispute. However, if an agreement is not reached by the end of the thirty-day period and the U.S. President does not establish an Emergency Board, the parties are free to exercise lawful self-help, which includes carrier-imposed working conditions or a strike by the union/organization.

For a flow-chart of Mediation procedures, see the Mediation section of the NMB website at [www.nmb.gov](http://www.nmb.gov). For more information on Emergency Boards, see the Representation and PEBs section of this Annual Report.

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## Mediation Highlights

In Fiscal Year (FY) 2011 mediators faced similarities from the previous year as they continued to work in a very challenging bargaining environment anchored by a fragile economic recovery. Settlements are elusive as legacy air carriers remake themselves after bankruptcies, concessions and mergers. Airline profits have been hard earned and small, but profits of any size raise employee expectations at the bargaining table.

In national handling, where freight railroad profits are at record highs, employees rejected the carriers' proposal to modify healthcare plans even when double-digit wage increases were attached. Carriers and organizations, both air and rail alike, remained engaged in battles over higher wages and better benefits versus the ability to pay. While mediators consistently closed cases this fiscal year, mediation was increasingly important and difficult in assisting the parties to reach Collective Bargaining agreements.

In the face of many challenges, mediator productivity continues to be high in that mediators closed twenty-four percent more cases in FY 2011 than in FY 2010. Overall case intake also increased by more than ten percent over FY 2010.

**Legacy Carriers** The legacy carriers did not fare well this fiscal year in the area of labor relations. AA and UAL have been in mediation with some of their unions for well over 2 years. While USAirways was able to reach agreement with the TWU-represented dispatchers outside of mediation, it remains very much at odds with the flight crew unions: AFA and USAPA. Consequently, 25% of currently open NMB mediation cases involve legacy carriers.

**Cooling-off Periods** Massachusetts Bay Commuter Rail (MBCR) entered into a cooling off period with 12 of its unions in January 2011 which was extended by mutual agreement until March and then again until May. Tentative agreements were reached with all of them. One organization, however, refused to take the

tentative agreement out for a vote, six failed ratification, and five ratified. After a third extension of the status quo, agreements were reached with all the remaining unions.

The five Class I Railroads represented by the National Carrier's Conference Committee and eleven of their Unions were released from mediation in early September. Self-help will be available on October 7, 2011; however, the President has indicated that he would name a Presidential Emergency Board that would forestall any self-help activity.

**Self-help Activity** There was no self-help activity in FY 2011.

**Settlements** Several significant cases were settled this fiscal year with assistance from NMB mediators with Air Tran/ALPA, Air Tran/AFA, UPS/IBT, Pinnacle/ALPA, Continental/IAM, Alaska/IAM, Miami Air International/AFA and Horizon/IBT being among the airlines. Significant rail cases that closed include: MBCR and the TCU, BRS, NCFO, JCC, and IBB; South Central Florida Express/IAM; Montana Rail Link/ATDA; and Indiana South Railroad/IAM.

**Pending Cases** Significant resources will continue to be devoted to open cases at American, United and USAirways, which account for one-quarter of all cases in mediation as concessions, bankruptcies and mergers solidified employee expectations of restoration or partial recovery of wages and benefits.

Other airline cases in mediation include PSA/ALPA & AFA, Piedmont/ALPA & AFA, Spirit/AFA, SWA/TWU and American Eagle/TWU.

Beyond the Commuter Railroad cases, several Regional and Short Line Railroads are in mediation including DQ&E/ATDD, WC/BMWED, ATDD & BRS, PGR/UTU, GWR/BLET and PAR/BLET.

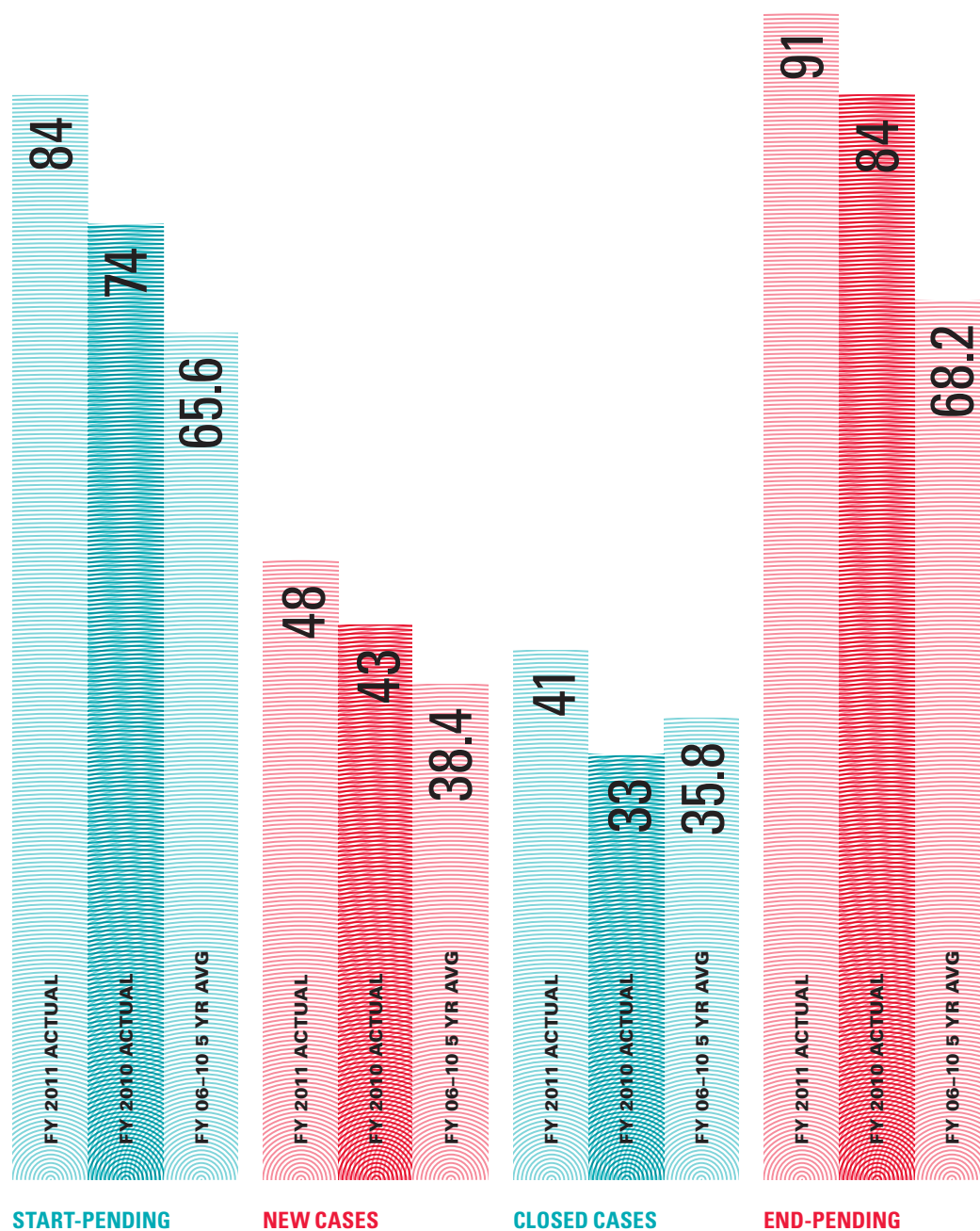
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## Mediation Cases

The following chart reflects actual case numbers for FY 2011 and FY 2010 and a five-year Average.



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## ADRS Overview

In addition to statutory mediation and arbitration services under Sections 6 and 3 of the RLA, the NMB provides voluntary Alternative Dispute Resolution (ADR) services. ADR services include facilitation, training, grievance mediation, and an online dispute resolution (ODR) program, applying technology to the dispute resolution process.

The primary goal of the NMB's ADR program is to assist the parties in learning and applying more-effective, less-confrontational methods for resolving disputes. Another goal is to help the parties resolve more of their own disputes without outside intervention, and to use appropriate ODR technology to increase

the efficiency and reduce the cost of dispute resolution efforts for the parties.

The NMB established its ADR Services program with the conviction that use of ADR and ODR methods would result in fewer cases progressing to statutory mediation, reduce and narrow the issues which the parties bring to mediation, and positively affect working relationships among the parties.

A complete description of and an application for ADR services may be found on the Agency's web site at [www.nmb.gov](http://www.nmb.gov).

## ADRS Highlights

In FY 2011 the Office of Alternative Dispute Resolution Services (ADRS), before and after being merged into the Office of Mediation Services, continued to develop and deliver a wide range of ADR services, including training (T cases), facilitation (F cases), grievance mediation (GM) and facilitated problem solving (FPS). ADRS was also actively engaged in projects related to Information Communication and Technology (ICT), Records and Document Management (RDM), and Case Management as well as development and execution of agency-wide Records Management Training. The Records Management efforts resulted in the coveted Archivist Achievement Award for "Outstanding Achievement in Records Management" from NARA (National Archives and Records Administration), the second award the NMB has received in this area in 2 years.

During FY 2011, ADRS continued to offer special training programs and facilitation efforts outside the traditional grievance mediation and facilitation work. The promotion of the use of Online Dispute Resolution (ODR) tools and training has greatly increased demands for ADRS services such as Online Workspaces for the parties, Online Video Conferencing, and pilot programs in conjunction with the Office

of Arbitration including online arbitrations and "submissions only" arbitrations.

ADRS provided grievance mediation training and services that, again in FY 2011, aided a reduction of the number of cases going to arbitration or the bargaining table. In a railroad grievance mediation case recently, for example, ADRS provided grievance mediation and training to the parties. That session began the process of addressing a handful of issues that had triggered over 300 grievances. The parties reached resolution on one of the issues that had triggered a number of grievances. The parties were extremely pleased with the outcome and have planned additional sessions to fully address the other issues.

ADRS continued a series of projects in FY 2011 in cooperation with the Office of Arbitration Services designed to increase financial-management control of arbitration processes and address the backlog of aged cases. First, ADRS led the development of an automated work request and reporting process for the arbitrators, facilitating case tracking and case auditing. Secondly, ADRS partnered with the Office of Arbitration Services (OAS) to offer an expedited Grievance Mediation and Arbitration

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process designed to increase the use of online technology and to move cases through the system in an expedited manner such as the case referenced in the above paragraph.

Also in FY 2011, ADRS further developed and enhanced NMB's online learning program, the Lyceum, to offer online training to all parties. The NMB Lyceum allows any party, relevant practitioner, and the general public to access the training material at no cost and without having to use passwords or other identifying information. Additionally, the NMB posts items of interest to the parties such as presentations and podcasts of panels and guest speakers at the 2010 Passenger Rail Conference.

**Training** During FY 2011 ADRS continued to refine and update the standard training offered by the NMB, including Grievance Mediation training, Facilitated Problem Solving training and specialized training tailored to the parties' needs, such as team building and System Boards of Adjustment training. In addition, special training in expedited mediation/arbitration processes was requested by the parties and delivered by ADRS and Mediation staffs.

**GM Facilitation and Negotiation** During FY 2011, ADRS and Mediation staff members were engaged in direct delivery of dispute resolution services as facilitators in Grievance Mediation, as facilitators in Interest-based Contract Negotiations, and as trainers in a variety of programs.

A special effort was made to merge grievance mediation with expedited arbitration. Successful GM/expedited projects were completed with New Jersey Transit/BRS and resulted in settlement rather than arbitration. Yet another case, Amtrak/UTU/BLET resulted in a multi-party facilitation/grievance mediation to settle a potential dispute between the carrier and 2 unions before grievances were generated. While work is limited but growing on the railroad side, airlines continue to be out largest user of Grievance Mediation Services.

#### ODR Research and Development

The NMB continued its exploration of online tools to assist mediators, arbitrators and NMB employees in general. Additional research and development in the area of social media and social networking is being analyzed for potential use in ADR development at the NMB.

During FY 2011, online tools were used in training, drafting of agreements, preparation for face-to-face negotiations, agenda setting, and online arbitration for a variety of carriers and organizations. Negotiating parties used comprehensive online workspaces provided by the NMB to manage preparation for negotiations, and to manage information during contract negotiations or grievance mediation. Carriers and organizations actively using NMB online workspaces include: AE/ALPA, CSXT/ATDA, CSXT/UTU, World/IBT, Omni Air/IBT, and Air Wisconsin/IAMAW.

**Online Arbitration** The NMB continued to develop and use during FY 2011 its web-based video and document sharing capabilities. The NMB online arbitration tools have positively impacted the allocation and use of funds in that monies otherwise used for arbitrator travel salaries and expenses were redirected to arbitration hearings and decision writing. Virtually all executive sessions during FY 2011 for the NRAB were held using ODR technology.

**NMB Corporate Memory** In FY 2011, the NMB continued to refine its records and document management program, improving the search engine and further integrating the records database with the agency case management system.

**NMB Knowledge Store** The ADRS staff continued to build and improve the public archive of information available through the NMB Knowledge Store. Currently, the NMB Knowledge Store contains over 100,000 documents in an easily searchable format, including arbitration awards, representation decisions, annual reports, PEB reports, and industry contracts. In FY 2011, the NMB expanded a pilot program to allow carrier and organizations to directly enter final, signed arbitration decisions into the Knowledge Store, ensuring rapid availability of an entire set of decisions for the entire RLA community and the public. During FY 2011, CSXT, AMTRAK, UP, the UTU and the IBEW, were enabled to engage in "direct deposit" of arbitration decisions.

**NMB Case Management Systems** The ADRS Staff continued to refine protocols, standard operating procedures (SOPs), and training for case management systems in Arbitration and Mediation. During FY 2010, Mediation and OLA were moved from an old case management

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data base to a new system integrated with the agency's e-records system. In FY 2011 the system continued to be improved and refined. ADRS continued to assist the departments in

improving their business processes, and in the production of specialized reporting systems and other ad hoc requirements.

## ADR Cases

The following chart reflects the actual case numbers for FY 2011 and FY 2010 and a five-year average.

